

902 KAR 50:033. Standards for enforcement procedures for manufacturing grade milk.

RELATES TO: KRS 217.005-217.215, 217C.010-217C.990

STATUTORY AUTHORITY: KRS 194.050, 211.090

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217C.040 authorizes the Cabinet for Human Resources to regulate milk for manufacturing purposes. This administrative regulation sets uniform standards for the enforcement of 902 KAR 50:031 and 902 KAR 50:032 pertaining to the production, transportation, handling, sampling, examination, grading, and sale of manufacturing milk and milk products; inspection of dairy farms; and, provides for the revocation and reinstatement of producer permits.

Section 1. Enforcement Procedures for Raw Milk. (1) Sight and odor. Bulk tank loads or individual producer milk received shall be examined on an organoleptic basis by the hauler or by the milk grader. Milk shall not be received if any off odors or abnormal conditions are found which will adversely affect the finished product. Producer milk rejected for sight and odor by a hauler or milk grader shall be identified by coloring if in a can or tagged with a reject tag if in a bulk tank.

(2) Bacterial estimates. At least one (1) time each month at irregular intervals, a representative mixed sample of each producer's milk shall be tested. Producers shall be notified of the results of all tests performed.

(a) A producer shall be given a notice of intent to suspend permit by the cabinet if two (2) of the last four (4) counts exceed bacterial standards specified in 902 KAR 50:031. An additional sample shall be taken within twenty-one (21) days of sending the notice, but not before the lapse of three (3) days. A producer shall remain under notice of intent to suspend permit if two (2) of the last four (4) samples exceed the standards.

(b) A producer's permit shall be suspended by the cabinet if three (3) of the last five (5) samples exceed the standard.

(c) A producer may be issued a temporary permit by the cabinet upon receipt from the producer of a satisfactory farm inspection and Form DFS-7A, "Application for Reinstatement of Permit", incorporated by reference. If the sample from the first milk offered for sale is in compliance, the permit is reinstated. If the sample is not in compliance, the temporary permit shall be withdrawn. A copy of Form DFS-7A, "Application for Reinstatement of Permit", revised October 1986, is available for inspection and copying, 8 a.m. until 4:30 p.m., Monday through Friday, at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

(d) Upon issuance of the temporary permit, the producer shall have no milk in the bulk tank produced during the period the permit was suspended unless specified by the cabinet. Three (3) samples shall then be taken at the rate of not more than two (2) per week on separate days within a three (3) week period.

(e) The cabinet may reinstate the producer's permit upon receipt of a bacteria sample in compliance with standards set in 902 KAR 50:031.

(3) Sediment.

(a) Bulk tank producers.

1. If the sediment disc is classified as #1 or #2, the producer's milk may be accepted.

2. If the sediment disc is classified #3, the producer's milk may be accepted. The producer shall be notified by the cabinet in writing and a second milk sample shall be collected by a certified sampler and retested on the next milk pickup. If the second sample is classified #3, the producer shall be issued a notice of intent to suspend permit and an additional sample shall be collected and tested. If the additional sample fails to obtain a #1 or #2 sediment sample result, the producer's permit shall be suspended. If the second sample is classified #4, the producer's permit shall be suspended.

3. If the sediment disc is classified as #4, the producer shall be notified by the cabinet in writing

and the producer's milk sample shall be collected by a certified sampler and retested on the next milk pickup. If the retest of this sample fails to obtain a #1 or #2 sediment sample result, the producer's permit shall be suspended.

4. The permit suspension shall be in effect until a #1 or #2 sediment test is obtained and upon receipt by the cabinet of an "Application for Reinstatement of Permit".

(b) Can producers.

1. If the sediment disc is classified as #1 or #2, the producer's milk may be accepted.

2. If the sediment disc is classified #3, the producer's milk may be accepted. The producer shall be notified by the cabinet in writing and a second milk sample shall be collected by a certified sampler and retested on the next milk pickup. If the second sample is classified #3, the producer shall be notified and additional samples shall be collected and tested. If the additional samples fail to obtain a #1 or #2 sediment sample result on two (2) consecutive samples, the producer's permit shall be suspended. If the second sample is classified #4, the producer's permit shall be suspended.

3. If the sediment disc is classified as #4 the milk shall be rejected and an approved color added to the milk. The producer shall be notified by the cabinet in writing and the producer's milk sample shall be collected by a certified sampler and retested on the next milk pickup. If the retest of this sample fails to obtain a #1 or #2 sediment sample result, the producer's permit shall be suspended.

4. The permit suspension shall be in effect until a #1 or #2 sediment test is obtained and upon receipt by the cabinet of an "Application for Reinstatement of Permit".

(4) Abnormal milk. Each producer shall be tested at least four (4) times each six (6) months and those tests showing a somatic cell count in excess of 1,000,000/ml shall be notified in writing by the cabinet. If two (2) of the last four (4) somatic cell counts exceed 1,000,000/ml, the producer shall be given a notice of intent to suspend permit by the cabinet. The producer shall remain under notice if two (2) of the last four (4) samples exceed the limit. An additional sample shall be collected within twenty-one (21) days after issuance of the notice of intent to suspend permit, but not before the lapse of three (3) days. A producer's permit shall be suspended by the cabinet if three (3) of the last five (5) somatic cell counts exceed the limit. Upon receipt of an "Application for Reinstatement of Permit", a sample shall be analyzed. If the sample is in compliance, the permit is reinstated. Three (3) samples shall be taken at the rate of not more than two (2) per week on separate days within a three (3) week period.

(5) Drug residues.

(a) All marketed milk shall be sampled prior to processing using approved screening procedures defined in 902 KAR 50:031. If the presence of drug residue is detected, a confirmatory test approved by the cabinet shall be performed. If the confirmatory test result is positive for drug residue, the milk shall be disposed of either in a manner that removes it from the human and animal food chain or acceptably reconditioned for animal food as determined by the cabinet. If a commingled sample is positive, each producer represented in the sample shall be tested immediately.

(b) All positive drug residue sample results shall be reported to the Cabinet for Human Resources, Milk Control Branch, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Milk for manufacturing permit shall be suspended upon confirmed positive drug residue sample.

1. First suspension within a twelve (12) month period shall require a two (2) day minimum loss of milk or equivalent as determined by the cabinet.

2. Second suspension within a twelve (12) month period shall require a four (4) day minimum loss of milk or equivalent as determined by the cabinet.

3. Third suspension within a twelve (12) month period shall require a four (4) day minimum loss of milk or equivalent as determined by the cabinet. The cabinet shall initiate administrative procedures to revoke the producer's permit by proceeding to an informal hearing.

(d) The milk for manufacturing permit shall be temporarily reinstated for fourteen (14) days if a

negative drug residue sample of raw milk is reported to the cabinet, and the cabinet is in receipt of an "Application for Reinstatement of Permit".

1. The milk for manufacturing permit shall be reinstated after the cabinet receives a copy of the "Milk and Dairy Beef Residue Prevention Protocol" Completion Certificate signed by the producer and his veterinarian. The "Milk and Dairy Beef Residue Prevention Protocol", 1993 Producer Manual, is published by Agri-Education, Inc., 801 Shakespeare Avenue, Stratford, Iowa 50249. The "Milk and Dairy Beef Residue Prevention Protocol", revised October 1, 1992, is incorporated by reference, and a copy is available for inspection and copying, 8 a.m. until 4:30 p.m., Monday through Friday, at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

2. Failure to return the completion certificate within fourteen (14) days of the temporary reinstatement shall result in a minimum one (1) day temporary permit suspension.

(6) Excessive water.

(a) Milk producers with supplies found to contain at least ten (10) percent excessive water shall be issued a permit suspension requiring the supply to be withheld from sale immediately. Milk from this supply shall not be sold and the permit shall not be reinstated until a sample is negative for excessive water, and the cabinet is in receipt of an "Application for Reinstatement of Permit".

(b) Milk producers with supplies found to contain at least two (2) percent and less than ten (10) percent excessive water shall be notified of adulteration and retested after the lapse of three (3) days. If the retested sample continues to show at least two (2) percent and less than ten (10) percent excessive water, the producer's permit shall be suspended. Milk shall not be sold from this supply and the permit shall not be reinstated until a sample is negative for excessive water, and the cabinet is in receipt of an "Application for Reinstatement of Permit".

(c) Milk producers with supplies found to contain at least five-tenths (.5) percent but less than two (2) percent excessive water shall be notified. If the following sample shows at least five-tenths (.5) percent and less than two (2) percent excessive water, a supervised sample shall be collected. The supervised sample shall be used as a future reference for the accurate freezing point for the supply.

(7) Chemical contaminants.

(a) If laboratory results of an individual producer sample show a violation of an established tolerance level for a particular chemical contaminant, the supply shall be withheld from the market channels. The producer shall be notified immediately and confirmed in writing by the cabinet.

(b) Continued sampling of an excluded milk producer's supply shall be maintained until an acceptable level of the contaminant is attained. The frequency of additional sampling may be at seven (7), fifteen (15), thirty (30), or sixty (60) day intervals, depending on the laboratory workload and the previous contaminant level. Higher chemical contaminant levels shall be sampled at lesser frequencies.

(c) If levels based on an official sample fall below acceptable tolerance levels, the producer shall be notified immediately and confirmed in writing by the cabinet that the supply is again acceptable for sale.

(d) Producer assistance in testing individual cows, feeds, and water supplies may be obtained on an unofficial basis from the Kentucky Diagnostic Laboratories and commercial laboratories.

Section 2. Manufacturing Milk Producer Permit Suspension and Reinstatement. (1) An individual producer's permit shall be suspended if the cabinet has reason to believe that a public health hazard exists; the producer has violated any of the requirements of 902 KAR 50:031, 902 KAR 50:032, or this administrative regulation; or the producer has interfered with the cabinet in the performance of its duties. The cabinet shall in all cases, except if the milk involved creates, or appears to create, an imminent hazard to the public health; or in any case of willful refusal to permit authorized inspection, serve upon the producer a written notice of intent to suspend the permit. This notice shall specify the

violation in question and afford the permit holder reasonable opportunity to correct the violation. Suspension of a permit shall remain in effect until the violation has been corrected to the satisfaction of the cabinet.

(2) If the producer's permit has been suspended three (3) times within a twelve (12) month period for a violation of any type in accordance with 902 KAR 50:031, 902 KAR 50:032, or this administrative regulation, the producer shall be issued a notice that upon the fourth suspension within a twelve (12) month period the producer shall appear at the cabinet for a conference to show cause why the permit should be reinstated. Upon the fourth suspension within a twelve (12) month period, the producer shall appear before the cabinet to show cause why the permit should be reinstated. At this conference the cabinet may set conditions under which the permit may be reinstated. This permit suspension shall remain in effect until the conditions of the conference have been met. If a fifth suspension occurs within a twelve (12) month period, the cabinet shall proceed to a hearing. At this hearing the producer shall have the opportunity to show cause why the permit should not be permanently revoked, and the cabinet shall affirm, modify, or rescind the producer's permit.

(3) Upon written application of any person whose permit has been suspended, or upon application within forty-eight (48) hours of any person who has been served with a notice of intention to suspend, and in the latter case before suspension; the cabinet shall, within a reasonable time, proceed to hearing to ascertain the facts of the violation or interference.

(a) The request for a hearing shall be made in writing on Form DFS-8, "Request for Hearing", revised January 1989, incorporated by reference. Form DFS-8, "Request for Hearing", may be viewed or obtained, 8 a.m. until 4:30 p.m., Monday through Friday, at the Office of the Commissioner of Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

(b) The cabinet shall notify the requesting party in writing of the:

1. Name of the hearing officer; and
2. Time and place of the hearing.

(c) All parties shall be allowed a reasonable time to prepare for the hearing, including the right to:

1. Be represented by counsel;
2. Present evidence on his behalf; and
3. Cross-examine witnesses.

(d) A transcript of the hearing shall not be made unless requested. The expense of transcribing the hearing shall be the responsibility of the requesting party.

(e) The hearing officer shall make written findings of fact and conclusions of law, and render a decision based upon the evidence presented. The decision of the hearing officer shall be the final decision of the cabinet.

(4) Any permit suspended under the provisions of 902 KAR 50:031, 902 KAR 50:032, or this administrative regulation may be reinstated by submission of satisfactory evidence to the cabinet that the violation has been corrected. (20 Ky.R. 2281; eff. 3-14-94.)